

To: Lamoine Board of Appeals  
From: John Holt, Chair, Lamoine Planning Board  
Re: Benincasa appeal  
Date: October 27, 2014

Attorney Edmund Bearor asserts in his September 8, 2014 appeal, on behalf of his client Anthony Benincasa, that on August 13, 2014, “the Planning Board erroneously granted a waiver for multiple entrance[s] to Barry Balach of 7 Lorimer Drive” to his lot. Bearor argues further that the Planning Board “exercised an unlawful delegation of its authority because the ordinance does not list criteria or standards of review applicable to the consideration of such a waiver.” In an October 24, 2014 email note intended for the Board of Appeals, Bearor states, “We are not saying the Planning Board didn’t evaluate this request for a waiver responsibly, rather we argue... that the waiver provision in this section of the ordinance is a standardless delegation of authority and therefore invalid.”

Section 5.C. of the Lamoine Building and Land Use Ordinance grants to the Planning Board the authority to grant the type of waiver in question. The ordinance reads: “Each lot shall be accessed by no more than one curb cut unless a waiver is granted by the Planning Board.” As regards Bearor’s assertion that the waiver provision in Section 5.C. of the ordinance is invalid, it should be noted that determination of the legality of a provision of an ordinance rests with the Courts and not the Appeals Board. The Appeals Board must act as if the ordinance provision is valid and the ordinance clearly states that the Planning Board is granted the authority to waive the one curb-cut restriction.

In the absence of written criteria or standards of review applicable to the consideration of such a waiver, the members of the Planning Board noted that granting a waiver to Mr. Balach would enable him only to *apply* for a permit to access his lot by more than one curb cut and was not, in fact, the granting of a permit to do the same. According to the same section of the ordinance, any permit to actually establish access from Lorimer Drive, a town road, to Mr. Balach’s lot had to be issued by either the Lamoine CEO or Road Commissioner. The Planning Board noted also that Section 5.C. requires that “any access shall conform to Chapter 299 of the Maine Department of Transportation Highway, Driveway and Entrance Rules Part A Section 1 & 2 and Part B Sections 1 & 2 and any subsequent revisions.” The Planning Board reasoned that if Mr. Balach’s application for an entrance permit did not meet the criteria as required in Section 5.C., then the Road Commissioner would not issue the permit. The record indicates that the Road Commissioner Marckoon did issue the entrance permit.

There are no provisions in the BLUO to indicate that the Planning Board erred in granting the waiver nor did the Planning Board exercise an unlawful delegation of its authority.